

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Andrew Swinton,

Petitioner,

v.

Jon Ozmint, Director of the S.C. Dept.
of Corrections; and Henry McMaster,
Attorney General for South Carolina,

Respondents.

C/A No. 4:05-2826-GRA-TER

ORDER
(Written Opinion)

This matter is before the Court on remand from the 4th Circuit Court of Appeals for the limited purpose of determining whether petitioner timely filed his appeal. For the reasons stated herein, the Court finds that petitioner did file his Notice of Appeal in a timely manner.

Rule 4(a)(1)(A) of Appellate Procedure provides that a notice of appeal must be filed with the district clerk within 30 days after the judgment or order appealed from is entered. Rule 4(c) of Appellate Procedure states that where, as here, the appellant is an inmate confined in an institution, then the notice is timely if deposited in the institution's internal mail system on or before the last day for filing. *See Houston v. Lack*, 487 U.S. 266 (1988). This Court entered an order granting summary judgment to defendants and dismissing this action on April 7, 2006. Because the 30-day deadline fell on a Sunday, petitioner had until May 8, 2006 to

deliver his notice of appeal to the appropriate prison official responsible for mail.

The certificate of service attached to petitioner's notice of appeal is dated April 28, 2006. Although the envelope containing petitioner's notice of appeal is postmarked May 9, 2006, the Walden Correctional Institution date-stamp on the envelope is April 28, 2006.¹ Therefore, the Court finds that the notice of appeal was delivered to prison officials on April 28, 2006, well within the time for filing an appeal.

IT IS THEREFORE ORDERED that petitioner's notice of appeal be deemed timely filed with this Court.

IT IS SO ORDERED.



G. ROSS ANDERSON, JR.
UNITED STATES DISTRICT JUDGE

Anderson, South Carolina

October 11, 2006

¹ See Envelope #3 to the Notice of Appeal. At the request of the Court, the clerk's office obtained this envelope from the plaintiff and scanned it into the electronic filing system.

NOTICE OF RIGHT TO APPEAL

Petitioner is hereby notified that he has the right to appeal this Order within thirty (30) days from the date of the entry of this Order, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure. Failure to meet this deadline, as modified within Rule 4, will waive the right to appeal.